POLICE DEPARTMENT CITY OF NEW YORK

June 7, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Diery Louis
Tax Registry No. 940395
81 Precinct
Disciplinary Case No. 2014-12483

Detective Eric Ortiz
Tax Registry No. 942297
Warrant Section
Disciplinary Case No. 2014-12486

Detective William Brown
Tax Registry No. 947989
Warrant Section
Disciplinary Case No. 2014-12484

Sergeant Eric Samuels
Tax Registry No. 923106
Warrant Section
Disciplinary Case No. 2014 12485

Charges and Specifications:

Disciplinary Case No. 2014-12483

1. Said Police Officer Diery Louis, on or about May 9, 2013, at approximately 0930 hours while assigned to the 81st Precinct and on duty, in the vicinity of 30 Ralph Avenue (the 81st Precinct Station House), Kings County, was discourteous to Ms. Nadiyah Titus in that he stuck his tongue out at her and made depreciatory statements toward her.

P.G. 203-09, Page 1, Paragraph 2- PUBLIC CONTACT-GENERAL

Disciplinary Case No. 2014-12486

1. Said Detective Eric Ortiz, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

2. Said Detective Eric Ortiz, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, [redacted] County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED CONDUCT

Disciplinary Case No. 2014-12484

1. Said Detective William Brown, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, in the vicinity of [redacted] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

3. Said Detective William Brown, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, in the vicinity of [redacted] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

Disciplinary Case No. 2014-12485

1. Said Sergeant Eric Samuels, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, in the vicinity of [redacted] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

2. Said Sergeant Eric Samuels, on or about May 9, 2013, at approximately 0640 hours while assigned to the Warrant Section and on duty, in the vicinity of [redacted] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

Appearances:

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Hearing Dates:
August 13, 2015 and February 29, 2016

Decision:
Case Nos. 2014-12484, 2014-12485 and 2014-12486
Detective Eric Ortiz, Detective William Brown, Sergeant Eric Samuels
Guilty of all charges

Case No. 2014-12483
Police Officer Diery Louis
Not Guilty

Trial Commissioner:
ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on August 13, 2015 and February 29, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB called Nadiyah Titus as a witness. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Brown, Samuels and Ortiz Guilty of the charged misconduct in Case Nos. 2014-12484, 2014-12485 and 2014-12486. I find Respondent Louis Not Guilty of the charged misconduct in Case No. 2014-12483.

FINDINGS AND ANALYSIS

The following is a summary of the facts that are undisputed. On April 15, 2013, Respondent Sergeant Eric Samuels, Respondent Detective Eric Ortiz, and Respondent Detective William Brown of the Brooklyn Warrant Squad entered and searched 5[redacted] a private residence in Brooklyn. The team was searching for two brothers, Person A and B wanted by the 81st Precinct in a pending investigation[1]. Both men had outstanding "I-Cards[2]" and Person B had an outstanding arrest warrant issued in 2010 for failure to appear to answer a summons for possessing an open container of alcohol in public

[1] While the record is silent as to the nature of the investigation concerning Person A, Person B was arrested on April 15, 2013 in connection with a burglary investigation.

[2] An "I-Card" is an internal NYPD document which is generated when investigators within the Department believe they have accumulated sufficient evidence to constitute probable cause to arrest an individual for a crime. This document is entered into NYPD databases and is searchable by members of the Department.

(NYC Administrative Code § 1 0-125[b]). The warrant listed [redacted]. Brooklyn, New York, as his residence. Person B was apprehended by Detective Brown on April 15, 2013. and handed over to the 81 st Precinct Detective Squad for questioning in connection with the outstanding "I-Card." His relative, Nadiyah Titus ("Titus"), was also home during the execution of that warrant (T. 107, 112-113; Resp. Ex. A)

During the course of his continued investigation into Person A's whereabouts, Respondent Brown determined that [redacted] t was also Person A's residence. On one occasion, Respondent Brown spoke to Person Aon the phone and was told that he was visiting family in Georgia and would be back in New York sometime in early May (T. 114-116). Despite this assertion, Respondent Brown submitted an application to the Kings CountySupreme Court on May 7, 2013, and was granted an order authorizing the use of a pen register on Person A's cell phone. Based upon the results of that pen register, Respondent Brown came to believe that Person A was not in Georgia as he had asserted but was. in fact, in New York. The pen register recorded the use of the phone between two cell towers in Brooklyn, leading him to suspect that Person A was actually in New York, rather than in Georgia. Investigating further, Respondent Brown [redacted] coordinates of Person A's phone, which indicated that the phone was being used at or near [redacted] (T. 118, 122-125; Resp. Exs. B. C, C1).

On May 9, 2013, at approximately 0640 hours, Respondents Samuels, Ortiz, and Brown, dressed in plainclothes, again entered and searched [redacted] Three additional members of the Brooklyn Warrant Squad covered the exterior of the house, including the roof.

As of the morning of May 9th, the arrest warrant for Person B. which the team had executed on April 15th, was still active. Though Person B's "I-Card" issue had been resolved, Person A's was still open. At the time Respondents entered 5[redacted] Titus was home alone. Person A was

ultimately apprehended at another location later that day. No further efforts were made to apprehend Person B for the active arrest warrant (T. 150, 160).

At one point during the search on May 9th, Titus called 911. After the team left her home, she went to the 81st Precinct to file a complaint about Respondents Brown, Samuels and Ortiz's deportment while in her home. Respondent Louis was seated near the front desk of the precinct while Titus waited to file her complaint. At some point, Titus observed Person A being brought into the precinct in custody. A short time later, a confrontation ensued between Titus and Respondent Louis, which culminated in Louis arresting Titus for disorderly conduct. She was placed in a cell and remained there for approximately forty minutes before ultimately being released and having her arrest voided.

The disputed issues in this case are: (1) whether Respondents Brown, Samuels, and Ortiz had sufficient legal authority to enter and search [redacted] and (2) whether Respondent Louis was discourteous to Titus inside the 81st Precinct.

Case Nos. 2014-12484, 2014-12485 and 2014-12486

Based upon the credible relevant evidence in the record, I find that Respondents Brown, Samuels and Ortiz entered 5[redacted] without sufficient legal authority. I further find that Respondents Brown, Samuels, and Ortiz searched 5[redacted] without sufficient legal authority.

Respondents each testified that they went to 5[redacted] on May 9. 2013, in order to arrest Person A and Person B. There is no dispute that Respondents were operating under the supposed authority of an arrest warrant for Person B which they had executed on April 15, 2013, at the same residence. Respondents Brown, Samuels and Ortiz all conceded that they were aware that the bench warrant, for a violation of the New York City Administrative Code prohibition on

possessing an open container of alcohol in a public place, had been previously executed on April 15th (T. 113, 188, 198). Under these circumstances, Respondents had no legal authority to enter the aforementioned premises. Respondents' jointly-held belief, that so long as the arrest warrant appeared in a database as active it possessed its original force, was incorrect. Based upon Respondents' personal knowledge of the previous execution of the arrest warrant, their mistake was neither reasonable nor made in good faith.

In *Arizona v. Evans*, 514 U.S. 1 (1995), the Supreme Court held that the Exclusionary Rule was not intended to be applied where the police make a mistake, so long as the police officer's conduct was objectively reasonable (*Arizona v. Evans*, 514 U.S. 1, 12). In that case, a police officer stopped Evans driving the wrong way on a one-way street in front of the police station. When asked for his driver's license, Evans produced it and informed the officer that it had been suspended. The police officer ran Evans' name through a computer database and confirmed that his license had been suspended but also learned that he had an outstanding misdemeanor arrest warrant. Based upon the outstanding warrant, Evans was placed under arrest. While being handcuffed, Evan dropped a cigarette which smelled like marihuana. Based upon this discovery, the police searched his vehicle and discovered a bag of marihuana under the passenger seat.

At the suppression hearing, Evans produced evidence which proved that the arrest warrant had already been satisfied and appeared in the database because a court clerk did not contact the Sherriff's Office to have it expunged. The lower court suppressed the evidence; the Arizona Court of Appeals reversed the lower court ruling, then the Arizona Supreme Court reversed the Court of Appeals. The United States Supreme Court held that the exclusionary rule was not designed to deter conduct of all government agents, just police officers, and there was no

evidence that the police officer was acting unreasonably in relying upon the police computer record.

In the leading New York case on the issue of a mistake of law made by a police officer, the Court of Appeals held that so long as the police action was based upon an objectively reasonable, although ultimately mistaken, view of the law, the action would be deemed lawful (*People v. Guthrie*, 25 N.Y.3d 130 [2015]). In *Guthrie*, a police officer stopped a vehicle for running a stop sign. During the stop, the officer detected signs of intoxication, which led to the defendant being subjected to field sobriety tests and breath analysis, all of which she failed. The defendant was charged with Driving While Intoxicated, in violation of Vehicle and Traffic Law Sections 1192(2) and (3), in addition to Failure to Stop at a Stop Sign, in violation of Vehicle and Traffic Law Section 1172(a). Prior to trial, the defendant successfully moved to suppress the evidence of intoxication because the evidence was the fruit of an unlawful stop. The defendant successfully argued that the traffic stop was unlawful because the stop sign had not been registered with the village in accordance with the Village Code. The Village Court suppressed the evidence, which judgment was affirmed by the County Court. The Court of Appeals granted leave to appeal and reversed the judgment, ruling that it was unreasonable to require the police officer to be aware of each legally registered stop sign in the municipality (*People v. Guthrie*, 25 N.Y.3d 130, 136). The Court went on to hold that so long as the officer had a reasonable belief that the defendant had failed to stop at a valid stop sign, the later discovery of the infirmity of the stop sign was irrelevant (*Guthrie* at 140).

I credit Respondent Brown's testimony that, on May 9, 2013, they were looking for both Person B and Person A, despite having arrested Person B on April 15th using the same arrest warrant. He acknowledged that because Person B had been arrested on that warrant, the warrant should then

have been vacated. It is undisputed that the database, the Criminal Records and Information Management System ("CRIMS"), should have reflected that action, had the warrant been vacated by a judge after Person B had been returned to court on it[3]. He testified, however, that on the morning of May 9th, the arrest warrant for Person B was still active and therefore they had the legal authority to enter [redacted]. Neither Respondent Brown nor Respondent Samuels took any additional steps to find out why Person B's arrest warrant was still active despite them having arrested him on it (T. 153-156, 205).

Based upon the foregoing, I find that it was not objectively reasonable for the very officers who executed the bench warrant on April 15, 2013, to attempt to execute the same warrant, at the same location, on May 9, 2013. Respondents had actual knowledge that Person B had been arrested on that warrant because they were the police officers who arrested him and brought him to the 81st Precinct. When they saw the same warrant still active in the CRIMS database, they took no steps to investigate because they felt they were not obligated to do so (T. 151, 163-164, 168). Moreover, they sought to capitalize on what they had to have known was most likely an error in order to bolster their apparent authority to gain access to [redacted]. Accordingly, the arrest warrant for Person B provided no authority to enter [redacted] on May 9, 2013.

As set forth above, Respondents did not have a valid arrest warrant. Respondent Brown conceded in his testimony that the only authority he believed he had to enter the premises on May 9, 2013 was the bench warrant (T. 150). It is undisputed that there were no exigent circumstances surrounding Respondents' entry into Titus' home; thus the only means of lawfully entering her apartment that morning would have been with her consent.

[3] I take judicial notice that the CRIMS database is maintained by the New York State Unified Court System.

Respondent Samuels testified that Titus, upon seeing Respondents inside her home, screamed, "What the fuck are you doing in my house?" and remained irate until they departed (T. 194). Respondent Samuels testified further that Titus provided him with a cell phone and he spoke to Person B. who similarly told him, "Get the fuck out of my house!" (Id.). Finally, Respondent Samuels represented to Titus and Person B that he had an outstanding warrant that he needed to clear up, which, as set forth above, was erroneous (Id.).

Respondent Brown testified that he told Titus "we are going to come in and check Person A and Person B's rooms and make sure to see if they're here" (T.138). There is no evidence in the record that any of the Respondents ever sought Titus' consent. Accordingly, I find that there is no evidence of either explicit or implicit consent to enter or search the premises.

The tribunal need not make a factual finding on Respondents' highly improbable assertion that the front door to the premise was open as they testified[4]; in the absence of a warrant, an exigency, or Titus' consent, they had no lawful authority to enter or search the premises. Accordingly, I find them each guilty of Specifications 1 and 2.

Case No. 2014-12483

Based upon the credible relevant evidence at trial, I find that there is insufficient evidence to establish by a preponderance of the evidence that Respondent Louis was discourteous to Titus.

Titus testified at trial that on the morning of May 9, 2013, she was asleep in her bedroom on the third floor of her home and unclothed. She was awakened by an officer standing at her bedroom door asking where her relative Person A was. She had not heard the doorbell ring prior to seeing the officer standing in the doorway. She asked the officer, whom she recognized from the

[4] The tribunal will take judicial notice that NYPD crime statistics show the 81st Precinct reported 247 burglaries in 2015, which represented a 34.5 % downward trend compared to the 377 burglaries reported in 2001.

April 15th search of the home, if she could dress herself. The officer obliged and stepped to the side of the bedroom door before quickly coming back into the doorway without having given her enough time to put anything on. Eventually, she put on a sarong wrap and went downstairs (T. 21-24).

At one point during the search, Titus called 911 because the officers would not show her a warrant and she felt they were not supposed to be there. Furthermore, she was uncomfortable that she was home alone and had "nothing on" (T. 32-33, 69; CCRB Ex. 3). Respondents Brown, Ortiz, and Samuels all testified that at no point did they enter Titus's bedroom during the search, nor did they see Titus in a state of undress at any point (T. 132, 139, 180-182, 184, 193-194, 203).

Titus testified that when she arrived at the 81st Precinct, she spoke to a lieutenant and told him that she wanted to file a complaint against an officer who was trying to look at her while she was getting dressed in her bedroom during the search. As she was waiting, the officers who had searched her house walked into the precinct with Person A in custody. During her conversation with the lieutenant, Titus testified that Respondent Louis "was making some kind of movement, some gestures" and she assumed that he thought she was talking to him. She told Respondent Louis that she was not speaking to him. At that point, Respondent Louis made a comment to the effect of " who would do that?" in response to Titus explaining to the lieutenant that one of the officers who had just arrived with Person A was the one who had been trying to watch her as she dressed during the search (T. 36-37).

Titus testified that she was surprised by Respondent Louis' statement and asked him why he was getting involved. According to Titus, she could not hear everything Respondent Louis was saying because he was on the other side of the glass partition. She testified that atone point,

Respondent Louis "tried to come out from behind the glass" but two officers stood around him and "put him back behind the glass." She told the lieutenant that she also wanted to file a complaint against Respondent Louis because of the way he was acting toward her. She then sat down and waited for the lieutenant. As she was sitting down, Respondent Louis walked past her, looked at her with "an intimidating stare" and stuck his tongue out at her. Titus and Respondent Louis "started having words" and she said to him, "You're a joke." Respondent Louis replied by saying, "I'm a joke, yeah, I'm a joke? Now you're under arrest." Titus testified that she put her hands up and started backing up into a corner, before ultimately being handcuffed and placed in a cell for approximately forty minutes. She was then released and left the precinct without filing a complaint against either officer (T. 44-45, 80-81).

Titus testified that while she was calm when she arrived at the precinct, she did have a "slight attitude" during her interaction with Respondent Louis because she was offended by what he had said. Titus admitted that she was upset, but denied being disorderly in any way. She also denied using profanity or making any threats toward anyone while in the precinct (Tr. 40, 91).

Respondent Louis testified that on May 9, 2013, at approximately 0930 hours, he had just arrived at the 81st Precinct and was preparing paperwork before he had to go to make a court appearance. He was seated at the Telephone Switchboard operator station adjacent to the precinct's glass partition and reception window. According to Respondent Louis, when Titus arrived, she was irate. She approached the window, pointed her finger at him and said, "You, mother-fucker. You right there, you changed your clothes thinking I wasn't going to know it was you. You were in my house, you were watching me getting dressed." Respondent Louis testified that he calmly explained to her that he did not know what she was talking about and that he had not been at her house. Titus then pointed to two detectives who had entered the precinct

with a handcuffed individual in their custody near the desk area and said, "You were with them!" (T. 213-217).

Respondent Louis testified that Titus continued with a deluge of name calling and profanities directed at him for about ten minutes, which included a threat to shoot him. After three or four times of asking her to sit down and to wait for somebody who would be able to help her, he gave her an ultimatum stating that if she did not calm down, she would have to leave. When she did not comply, Respondent Louis told her that she was being placed under arrest. When Respondent Louis tried to handcuff her, Titus began flailing her arms. With the help of another officer, Respondent Louis handcuffed Titus, advised the desk sergeant of the situation and placed her in a cell (T. 218-221).

Sometime thereafter, Respondent Louis was approached by his lieutenant who explained that Titus was upset because her relative had been arrested. The lieutenant asked him if he had any objection to exercising his discretion and releasing Titus. Respondent Louis agreed, voided her arrest, and she was released (T. 222).

Respondent Louis testified that his interaction with Titus occurred in full view of the precinct's front desk and two supervisors. At no point was he reprimanded for arresting Titus. He further denied making any derogatory or inflammatory statements to Titus at any point and denied sticking his tongue out at her (T. 224-225).

I credit the testimony of Respondent Louis as forthright and logical. The behavior attributed to him was clearly unprofessional, which makes it less likely that he would behave that way in a precinct, in full view of a superior officer. It is undisputed that Respondent Louis had nothing to do with the earlier search of Titus' apartment, so Titus' accusation that Louis was one of the police officers who had previously, in her view, been disrespectful to her, was misdirected.

I do not credit Titus testimony with respect to her conduct at the 81st Precinct, as she was likely in an agitated and combative state, having experienced that morning what I have previously found to be an unauthorized entry and search of her home. In addition, the sight of her relative Person A being brought into the precinct in custody would understandably be likely to further upset her. I find that she minimized her conduct to avoid responsibility for her actions. The explanation for this incident appears to have been best captured by the Desk Officer, who suggested that Respondent Louis void the arrest because Titus' outburst likely came about because she had just witnessed her relative brought into the precinct in custody.

Based upon the foregoing, I find Respondent Louis Not Guilty.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Samuels was appointed on August 31, 1998, Respondent Ortiz was appointed on July 10, 2006 and Respondent Brown was appointed on January 14, 2009. Information from their personnel records that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In previous cases, Respondents have forfeited five days for have been found guilty of entering and searching premises without sufficient legal authority. *See Disciplinary Case No. 2014-12438* (October 13, 2015), in which a twenty-year detective with no prior disciplinary record forfeited five vacation days for entering and searching an apartment without sufficient legal authority to do so; *Disciplinary Case No. 2007-82894* (Mar. 15, 2010), in which a thirteen-

year sergeant with no prior disciplinary record forfeited five vacation days for entering and searching complainant's basement without sufficient legal authority to do so.

In this case, however, Respondents' made the conscious decision to enter a premise through the authority of an arrest warrant they knew with certainty to have been previously executed. They chose to exploit what was an obvious mistake in order to obtain a perceived benefit. This action constitutes bad faith and warrants a more severe penalty.

Based on the foregoing, it is recommended that Respondents forfeit eight vacation days each.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

SEP 16 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ERIC ORTIZ
TAX REGISTRY NO. 942297
DISCIPLINARY CASE NO. 2014-12486

On his last three performance evaluations, Respondent received the following overall ratings: 4.5 "Extremely Competent/Highly Competent," 4.0 "Highly Competent," and 3.5 "Highly Competent/Competent." He has been awarded 7 medals for Excellent Police Duty and 6 medals for Meritorious Police Duty. [redacted]

From February 19, 2009 to February 19, 2010, Respondent was on Level I Force Monitoring for having three or more CCRB complaints in one year. Respondent was again placed on Level I Force Monitoring for the same reason on February 10, 2016, which remains ongoing.

Paul M. Gamble
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE WILLIAM BROWN
TAX REGISTRY NO. 947989
DISCIPLINARY CASE NO. 2014-12484

On his last three performance evaluations, Respondent once received an overall rating of 4.5 "Extremely Competent/Highly Competent" and twice received an overall rating of 4.0 "Highly Competent." He has been awarded 13 medals for Excellent Police Duty. [redacted]

Respondent has no prior disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT ERIC SAMUELS
TAX REGISTRY NO. 923106
DISCIPLINARY CASE NO. 2014-12485

On his last three annual performance evaluations, Respondent once received an overall rating of 3.5 "Highly Competent/Competent" and twice received an overall rating of 4.0 "Highly Competent." He has been awarded one medal for Meritorious Police Duty. [redacted]

Respondent has no prior disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials